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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,495	06/15/2000	ANDREW FRANCIS KIRBY	470044.403	6663

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EXAMINER

EGWIM, KELECHI CHIDI

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/529,495

Applicant(s)

KIRBY ET AL.

Examiner

Dr. Kelechi C. Egwim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 7-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims 7-51 drawn to an invention nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The term "finely divided" in claim 1, from which claims 2-6 depend, is a relative term, which renders the claims indefinite. The term "finely" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite particle diameter size, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. While the specification (see page 20, lines 6-10) recites that the dispersible granules (WG) typically have particle sizes of 5 to 15  $\mu\text{m}$ , there is no disclosure in the spec. of "finely" meaning 5 to 15  $\mu\text{m}$ . Further the term "granule" as in

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WG is normally not understood as being consistent with "fine" or "finely" since granules are usually larger than fine particles.

***Claim Rejections - 35 USC § 102***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kataoka et al. (JP 58'), for reasons cited in the previous action.

7. Claims 1-3, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kataoka et al. (JP 02'), Nabeya et al. or Narayanan et al., for reasons cited in the previous action.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-6 rejected under 35 U.S.C. 103(a) as being unpatentable over Robinson et al.

In the abstract, col. 2, lines 23-38, col. 4, lines 20-26 and Example 1, Robinson et al. teach aqueous dispersion/suspensions prepared by suspending (insoluble) agrochemicals and an alternating maleic acid/anhydride copolymer with a conjugated diene such as butadiene and/or isoprene (col. 3, lines 6-8).

While Robinson et al. does not recite a sequence of steps wherein the agrochemical is combined with the alternating copolymer prior to their dispersion in the water, the two are clearly taught to be dispersing in the same aqueous composition. It would have been obvious to add the two components to the water simultaneously where previously added separately. *In re Tatincloux* 108 USPQ 125 (physical process, contra chemical process *In re Freed* 163 USPQ 570).

### ***Response to Arguments***

10. Applicant's arguments filed 10/15/02 have been fully considered but they are not persuasive.

11. Applicant's arguments with respect to Robinson have been considered but are moot in view of the new ground(s) of rejection (necessitated by applicant's change of scope).

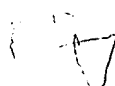
12. In response to applicant's arguments to Kataoka et al. and Nabeya et al., applicant's position is centered on the assertion that (See ¶ 1 in page 6 of response), by manipulation the polymerization, one can obtain a copolymer of styrene/maleic

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anhydride with a of 3:1 ratio (still essential in an alternating pattern). Correspondingly, without such manipulation, one would still obtain the inherent 1:1 alternating copolymer. Since, the cited references do not teach any such manipulation to alter the natural 1:1 alternating pattern in the copolymer, the copolymer would be an alternating copolymer as stated in the last Office action.

Further, the teaching in col. 1, lines 15-29 of USPN 3,864,319 that the polymers would inherently be alternating due to the reactivity of the electron donating styrene or isobutylene monomers in combination with the reactivity of the electron acceptor maleic anhydride monomers is deemed to be sufficient in establishing this fact as understood in the art.

13. Regarding the use of the alternation copolymer as a dispersant, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).



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14. Regarding the "isobutydiene" recited in ¶ 9 of last Office action, this represents a "typo". The references where cited recite "isobutylene". Isobutylene is not excluded from the claims.

15. Regarding applicant's argument that the alternating copolymer in Narayanan et al. is an alternating copolymer and not a "derivative" of an alternating polymer, this argument is not found persuasive since the derivative of an alternating copolymer is still an alternating polymer. Further, maleic acid-vinyl methyl ether is a derivative of maleic anhydride -vinyl methyl ether and visa versa, which is an alternating polymer. Applicant disclosure has not defined "derivative" in a way to exclude the maleic acid-vinyl methyl ether copolymer of Narayanan et al.

16. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., particles sizes from 5 to 15 microns) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

17. Regarding the solid character of the agrochemical principals in Narayanan et al., in the abstract and col. 1, lines 16-21, Narayanan et al. clearly teach the agrochemical principals to comprise low melting **solid** pesticides and herbicides.

18. Regarding the addition of the agrochemical/copolymer combination to water vs. the addition of the agrochemical and the copolymer in combination to water, the fact that the agrochemical and the copolymer are pre-combined prior to dispersion in water is exactly what applicant is claiming. Also, the initial dispersion of the agrochemical and the copolymer in an organic solvent prior to dispersion in water is not excluded as a step in dispersing the two.

Again, regarding whether the alternation copolymer is taught to act as a dispersant, arguing even if it were not, a recitation of the function of the copolymer in the dispersion must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

19. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (preferably 70% or more preferably 90% consecutive comonomer residue) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Narayanan et al. teaches alternating copolymers as claimed.



20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kelechi C. Egwim whose telephone number is (703) 306-5701. The examiner can normally be reached on M-T (7:30-6:00).

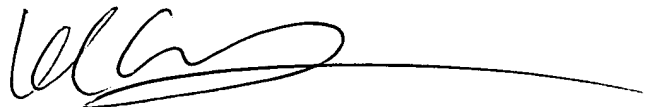
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (703) 308-2450. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

KCE

November 28, 2002